

### **REMARKS**

Claims 74-81 are now cancelled without prejudice or disclaimer. Claims 66-73 are currently pending. A terminal disclaimer is filed along with this paper to overcome the Examiner's rejections for double patenting. Claims 66 has been amended to overcome the Examiner's rejections. Figures 27 and 29 have been amended to overcome the Examiner's objections.

#### **Amendment to Figures and Traverse**

Examiner has objected to Figures 27 and 29 based on improper reference characters. Figure 27 has been amended to show that reference characters 302 and 322 refer to the hemispherical elements while reference characters 304 and 324 refer to the substantially hemispherical outer surface of the hemispherical elements. These references are clear from page 21 lines 1-2 and 18-20 of the specification. Figures 29 has been amended to correct a typographical error. The additional element 374 has been added as described at page 23 lines 14-15 of the specification. Removal of these objections is respectfully requested.

Examiner further objected that the aperture was not shown in the figures and its relationship to other elements was not shown. However, Figures 24 and 26A-26E show the aperture. Further, page 22 lines 24-26 and Figure 28 describe the placement of the aperture in relation to the other elements. Removal of this objection is respectfully requested.

#### **Amendment to Claims and Traverse**

Examiner rejected claims 66-67 as obvious in light of Gilby '304 and claims 68-73 as obvious in light of Gilby '304 in view of Basiji '955. Applicant has amended claim 66 to overcome these rejections. Removal of these rejections is respectfully requested.

Applicant challenges Examiner's Official Notice that is a system is disclosed to analyze one sample it can also be used to analyze a plurality of samples. As clarified by the amendment, the system taught in Gilby '304 cannot provide spectrographic analysis of a plurality of sample holders because it links the emitted light to a spectrometer via a notched holographic filters and a fiber optic cable.

The PTO has the burden of establishing a *prima facie* case of obviousness. MPEP 2142.

“To establish a *prima facie* case of obviousness, three basic criteria must be met.

First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings.

Second, there must be a reasonable expectation of success.

Finally, the prior art reference (or references when combines) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on the applicant’s disclosure.” (indentation and underline added for emphasis) MPEP 2142.

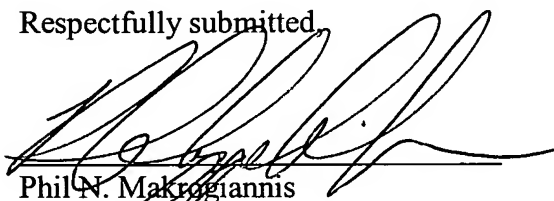
The prior art references of Gilby ‘304 by itself or in combination with Basiji ‘955 do not teach all the features of claim 66. For instance, neither teaches a plurality of sample holders. Further, there is no suggestion or motivation to combine Gilby ‘304 and Basiji ‘955 in either reference or in the art. Gilby ‘304 relates to spectroscopy for improving fluorescence excitation and collection efficiency by eliminating spherical aberration and coma. Basiji ‘955 relates to cytometry for improving spectral dispersion for time delay and integration detectors. There is no suggestion or motivation in either reference or in the knowledge of one of ordinary skill in the art for combining correcting spherical aberration and coma in such a cytometry system. Finally, there is no reasonable expectation of success that these references could be combines to provide any improvement on optical detection. Removal of these rejections is respectfully requested.

Fee Authorization

Should any extension of time and/or fee be necessary for timely submission of this paper, such extension of time is hereby requested, and the Commissioner is hereby authorized to charge **Deposit Account No. 01-2213 (order no. 4591C1)**. Any deficiency or overpayment should be charged or credited to this deposit account.

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Respectfully submitted,



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